

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE
CRIMINAL APPLICATION NO.4036 OF 2006

Shri Anil Sainath Chaudhari Applicant

Versus

The State of Maharashtra Respondent

Ms. Pranali Kakade for appilcant

Mr. S.S.Pednekar, APP for State

CORAM : S.C.DHARMADHIKARI, J.

DATE : 5TH DECEMBER, 2006

P.C.:

1. The applicant is an accused in MCOCA Special Case No.6 of 2004 which is pending on the file of the Special Judge, MCOC Act.

2. The C.R. was registered by Loni Kalbhor Police Station. The offences alleged are punishable under Section 3(1) of the M.C.O.C. Act and according to Mrs. Kakade, to be precise, Sub-Section 4 thereof.

3. Her submission is that applicant had applied for bail. His application was numbered as Exh.125. The said application was taken up for consideration along with the application preferred by co-accused Sambhaji Haribhau Kudale (Exh.127) and the said application was rejected by the Special Judge on 28th August, 2006 without adverting to the contentions raised before him.

4. She submits that for the offence of "organised crime" to be made out the ingredients specified in Section 2(1)(e) have to be satisfied. This provision refers to "continuing unlawful activity". This term is defined in Section 2(1)(d) to mean as under:

"2. Definitions._ (1) In this Act, unless the context otherwise requires .____

(a)

(b)

(c)

(d) "continuing unlawful activity" means in activity prohibited by law for the time being in force, which is a cognizable offence punishable

with imprisonment of three years or more, undertaken either singly or jointly, as a member of an organised crime syndicate or on behalf of such syndicate in respect of which more than one charge-sheets have been filed before a competent Court within the preceding period of ten years and that Court has taken cognizance of such offence;

5. According to her, from a bare perusal of this definition, it is clear that unlawful activity must be continuing. It should be prohibited by law. It should be a cognizable offence punishable with imprisonment of 3 years or more. It should be undertaken, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate. Further, in respect of such activity more than one charge-sheet should have been filed before a competent court within the preceding period of ten years and that the court should have taken cognizance of the same. She submits that material on record, as far as present applicant is concerned, was produced during the course of the bail application and it is urged that there are four CRs which resulted in a charge-sheet being filed against the applicant before a competent court. However, out of four

cases, in three cases applicant has been acquitted. Fourth case is pending. Her submission is that assuming that the cases are disposed of, yet, it was incumbent upon the learned Special Judge to have satisfied himself that requirements under Section 2(1)(d) and (e) are complied with in the facts and circumstances of this case. Registration of CRs or filing of charge-sheet, taking of cognizance with regard to the unlawful activity is not enough, but the activity should be undertaken singly or jointly as a member of an organised crime or on behalf of such syndicate. She brings to my notice that acts are individual and not connected with activities of organised crime syndicate or undertaken on its behalf. This aspect of the matter has been completely over looked, according to her, by the learned Special Judge. She submits that this was argued and highlighted before him.

6. She reiterates this submission before me and by placing several reliance on several decisions of this Court.

7. The learned APP states that there is material to disclose that the above cases are not isolated/ individual acts but a continuing unlawful activity and the

ingredients of the above mentioned provisions are satisfied.

8. Be that as it may, from a perusal of the order passed by the learned Special Judge under MCOC Act, it appears that he has not adverted to these aspects. There is nothing to indicate that all the contentions raised before him have been considered. In such circumstances, while satisfying himself regarding the mandate of Section 21(4), the learned judge should have dealt with these aspects as well. Instead of this court going into the same for the first time, it would be desirable and in the interest of justice if the application of applicant for bail (Exh.125) is restored to the file of the Special Judge, MCOC Act Pune for being decided afresh and in accordance with law, uninfluenced by any observations made in the impugned order. Accordingly, the said application stands restored to the file for decision afresh after hearing both sides. The learned judge to endeavour and dispose of the said application within a period of six weeks from the date of receipt of copy of this order. All contentions of both sides are expressly kept open. It is clarified that this court had not expressed any opinion on the same.

(S.C.Dharmadhikari, J.)